

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**MICHAEL ALAN KUHN
3300 Irvine Avenue #260
Newport Beach, CA 92660**

**Certified Public Accountant Certificate
No. CPA 21402**

Respondent.

Case No. AC-2012-46

OAH No. 2012100995

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 31, 2013.

It is so ORDERED August 1, 2013.

Leslie J. Lammanno
FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ERIN M. SUNSERI
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Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2012-46

12 **MICHAEL ALAN KUHN**
13 **3300 Irvine Avenue #260**
14 **Newport Beach, CA 92660**

OAH No. 2012100995

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Certified Public Accountant Certificate**
16 **No. CPA 21402**

17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
22 Accountancy. She brought this action solely in her official capacity and is represented in this
23 matter by Kamala D. Harris, Attorney General of the State of California, by Erin M. Sunseri,
24 Deputy Attorney General.

25 2. Respondent Michael Alan Kuhn (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

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3. On or about April 25, 1975, the California Board of Accountancy issued Certified Public Accountant Certificate No. CPA 21402 to Respondent. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2012-46 and will expire on August 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. AC-2012-46 was filed before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 14, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. AC-2012-46 is attached as Exhibit "A" and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. AC-2012-46. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2012-46.

1 10. Respondent agrees that his Certified Public Accountant Certificate is subject to
2 discipline and he agrees to be bound by the CBA's probationary terms as set forth in the
3 Disciplinary Order below.

4 RESERVATION

5 11. The admissions made by Respondent herein are only for the purposes of this
6 proceeding, or any other proceedings in which the California Board of Accountancy or other
7 professional licensing agency is involved, and shall not be admissible in any other criminal or
8 civil proceeding.

9 CONTINGENCY

10 12. This stipulation shall be subject to approval by the California Board of Accountancy.
11 Respondent understands and agrees that counsel for Complainant and the staff of the California
12 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
13 settlement, without notice to or participation by Respondent. By signing the stipulation,
14 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
15 stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this
16 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
17 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
18 the parties, and the CBA shall not be disqualified from further action by having considered this
19 matter.

20 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
21 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
22 effect as the originals.

23 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
26 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
27 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
28 writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant No. CPA 21402 issued to Respondent Michael Alan Kuhn is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. Cost Reimbursement

Respondent shall reimburse the CBA \$3,500.00 for its investigation and prosecution costs.

The payment shall be made as follows: quarterly payments (due with quarterly written reports), the final payment being due six months before probation is scheduled to terminate.

3. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the CBA or its representatives.

4. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the CBA or its designated representatives, provided such notification is accomplished in a timely manner.

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1 **5. Comply With Probation**

2 Respondent shall fully comply with the terms and conditions of the probation imposed by
3 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
4 its monitoring and investigation of the respondent's compliance with probation terms and
5 conditions.

6 **6. Practice Investigation**

7 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
8 professional practice. Such a practice investigation shall be conducted by representatives of the
9 CBA, provided notification of such review is accomplished in a timely manner.

10 **7. Comply With Citations**

11 Respondent shall comply with all final orders resulting from citations issued by the
12 California Board of Accountancy.

13 **8. Tolling of Probation for Out-of-State Residence/Practice**

14 In the event respondent should leave California to reside or practice outside this state,
15 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
16 California residency or practice outside the state shall not apply to reduction of the probationary
17 period, or of any suspension. No obligation imposed herein, including requirements to file
18 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
19 or otherwise affected by such periods of out-of-state residency or practice except at the written
20 direction of the CBA.

21 **9. Violation of Probation**

22 If respondent violates probation in any respect, the CBA, after giving respondent notice and
23 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was
24 stayed. If an accusation or a petition to revoke probation is filed against respondent during
25 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
26 probation shall be extended until the matter is final.

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1 The CBA's Executive Officer may issue a citation under California Code of Regulations,
2 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
3 licensee on probation.

4 **10. Completion of Probation**

5 Upon successful completion of probation, respondent's license will be fully restored.

6 **11. Restitution**

7 Respondent shall make restitution to Ted Bonanno in the amount of \$10,000.00, and shall
8 provide the CBA with proof of payment in full within 45 days of the effective date of the
9 Decision and Order.

10 **12. Library Reference Materials**

11 Respondent shall have immediate access to, shall use, and shall maintain published
12 materials and/or checklists that are consistent with the practice, including reference resources that
13 focus on California taxation. Such materials and checklists shall be produced on-site for review
14 by the CBA or its designee upon reasonable notice.

15 **13. Ethics Continuing Education**

16 Respondent shall complete four hours of continuing education in course subject matter
17 pertaining to the following: a review of nationally recognized codes of conduct emphasizing how
18 the codes relate to professional responsibilities; case-based instruction focusing on real-life
19 situational learning; ethical dilemmas facing the accounting profession; or business ethics, ethical
20 sensitivity, and consumer expectations. Courses must be a minimum of one hour as described in
21 California Code of Regulations Section 88.2.

22 If respondent fails to complete said courses within the first six months of the probationary
23 period, respondent shall so notify the CBA and shall cease practice until respondent completes
24 said courses, has submitted proof of same to the CBA, and has been notified by the CBA that he
25 or she may resume practice. Failure to complete the required courses no later than 100 days prior
26 to the termination of probation shall constitute a violation of probation.

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14. Active License Status

Respondent shall at all times maintain an active license status with the CBA, including during any period of suspension. If the license is expired at the time the CBA's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

15. Administrative Penalty

Respondent shall pay to the CBA an administrative penalty in the amount of \$2,500.00 for violation of Section 5100(g) of the California Accountancy Act. The payment shall be made within 90 days of the date the CBA's decision is final.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: June 4, 2013

Michael Alan Kuhn
MICHAEL ALAN KUHN
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

Dated: 7/15/13

Respectfully submitted,

Kamala D. Harris
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
ERIN M. SUNSERI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2012-46

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ERIN M. SUNSERI
Deputy Attorney General
4 State Bar No. 207031
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13 **3300 Irvine Avenue #260**
14 **Newport Beach, CA 92660**

A C C U S A T I O N

15 **Certified Public Accountant Certificate**
16 **No. CPA 21402**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
22 2. On or about April 25, 1975, the California Board of Accountancy issued Certified
23 Public Accountant Certificate No. CPA 21402 to Michael Alan Kuhn (Respondent). The
24 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on August 31, 2012, unless renewed.

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1 **STATUTORY AND REGULATORY PROVISIONS**

2 6. California Code of Regulations, Title 16, section 52, states in pertinent part that a
3 licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days.
4 The response shall include making available all files, working papers, and other documents
5 requested. A licensee shall respond to any subpoena issued by the Board or its executive officer
6 or the assistant executive officer in the absence of the executive officer within 30 days and in
7 accordance with the provisions of the Accountancy Act and other applicable laws or regulations.
8 A licensee shall appear in person upon written notice or subpoena issued by the Board or its
9 executive officer or the assistant executive officer in the absence of the executive officer. A
10 licensee shall provide true and accurate information and responses to questions, subpoenas,
11 interrogatories or other requests for information or documents and not take any action to obstruct
12 any Board inquiry, investigation, hearing or proceeding.

13 **COST RECOVERY**

14 7. Section 5107(a) of the Code states, in pertinent part, that the executive officer of the
15 board may request the administrative law judge, as part of the proposed decision in a disciplinary
16 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
17 violations of this chapter to pay to the board all reasonable costs of investigation and prosecution
18 of the case, including, but not limited to, attorneys' fees. The board shall not recover costs
19 incurred at the administrative hearing.

20 **FACTS**

21 8. On or about May 20, 2010, First Time Home Buyer Ted B. (T.B.) advised
22 Respondent that T.B. was about to purchase a home and requested that Respondent submit the
23 "First Time Home Buyer" tax credit forms to the IRS and to the California Franchise Tax Board.

24 9. Respondent accepted T.B.'s request, and properly filed the federal (IRS) form.

25 10. On or about May 20, 2010, Respondent advised T.B. that Respondent "would have to
26 research" the California tax credit, and would get back to T.B.

27 11. T.B. closed escrow on his new home purchase on June 3, 2010.

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1 12. T.B. sent Respondent numerous follow-up emails regarding the status of the
2 California tax credit, on June 9th, 10th, 11th, 13th and 14th, 2010.

3 13. On or about June 11th, 2010, T.B. asked Respondent if Respondent had determined
4 T.B.'s eligibility for the California tax credit. Respondent replied that T.B. does qualify for the
5 tax credit, but that the money the state had allotted to the program had been exhausted. On or
6 about June 13th, 2010, T.B. emailed Respondent again, asking Respondent if the money for the
7 program had truly been exhausted in 11 days.

8 14. On or about June 14th, 2010, Respondent replied that he had provided T.B. with all of
9 the information Respondent knew, and that the form was not included in his software.
10 Respondent advised T.B. that he would "check further."

11 15. On or about June 21, 2010, T.B. filed the California First Time Home Buyer Tax
12 Credit Form himself, via facsimile, as directed on the California Franchise Tax Board website.
13 T.B. filed this form, without the assistance of Respondent, 17 days after closing. On June 20th,
14 2010, T.B. sent Respondent another email, advising him that T.B. had found the California First
15 Time Home Buyer Tax Credit form. T.B. sent Respondent the link to the form. Respondent
16 replied "Let me know if they accept your application. I check [sic] with the FTB two weeks ago
17 and they said there were no funds. Unfortunately, you don't always get the correct answer when
18 to [sic] talk to the government offices."

19 16. On or about January 25, 2011, T.B. received a letter from the California Franchise
20 Tax Board stating that T.B.'s application for the First Time Home Buyer Tax Credit was denied
21 because more than 14 days had passed since escrow closed. T.B. had filed the California First
22 Time Home Buyer Tax Credit form on the 17th day after escrow closed.

23 17. Respondent failed to assist T.B. during the two week filing window for the California
24 First Time Home Buyer Tax Credit after agreeing to do so. The information necessary was
25 readily available on the internet.

26 18. T.B. made multiple attempts to reach Respondent, leaving messages and sending
27 email messages explaining the situation and attempting to schedule a telephone conference.
28 Respondent requested that T.B. fax him a copy of the denial letter from the California Franchise

1 Tax Board via facsimile. T.B. faxed the denial letter to Respondent immediately. Respondent
2 failed to respond any further to T.B.'s multiple telephone calls and email messages.

3 19. On or about February 7, 2011, the CBA received a complaint from T.B. regarding
4 Respondent's failure to adequately review the program requirements and timely prepare T.B.'s
5 application for the California First Time Home Buyer Tax Credit.

6 20. On or about March 7, 2011, the Enforcement Division of the CBA sent Respondent a
7 letter advising him that an investigator had been assigned to the case, and requesting his written
8 response to the complaint. The investigator obtained information readily available from the
9 California Franchise Tax Board website entitled "2010 Tax Credit for New Home/First-Time
10 Buyer." The information reflected that the California Franchise Tax Board stopped accepting
11 First-Time Buyer applications as of August 15, 2010, along with other information about the
12 program, process, and application requirements.

13 21. On or about May 11, 2011, the investigator spoke with Respondent via telephone and
14 advised him that she had not received his response to her letter. The investigator sent a second
15 letter to Respondent again requesting his written response to the complaint and advising him that
16 his failure to respond may result in enforcement action.

17 22. On or about May 20, 2011, Respondent sent the CBA a letter in which he stated that
18 the Respondent is an attorney, and has threatened litigation. Respondent stated it would not be
19 appropriate for him to make any comment that could become public record or available by
20 subpoena. Respondent further stated that it was his understanding that California is still
21 reviewing claims for the new home credit that have been submitted to determine if they are valid
22 and has not made final determination on claims filed.

23 23. On or about September 1, 2011, the investigator left a message for the Respondent to
24 call her. She received no response.

25 24. On or about September 26, 2011, the CBA sent a letter to Respondent requesting his
26 appearance at the CBA's Investigative Hearing, scheduled for November 3, 2011.

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1 25. On or about October 7, 2011, the supervising investigative CPA called Respondent
2 regarding the scheduled Investigative Hearing. Respondent was advised that his appearance was
3 required, and that his written response was required by October 14, 2011.

4 26. On or about October 17, 2011, the CBA sent a letter to Respondent advising him that
5 the time of his appearance at the Investigative Hearing had been changed from 1:00 p.m. to 3:00
6 p.m.

7 27. On or about November 3, 2011, the CBA Enforcement Advisory Committee held an
8 Investigative Hearing to obtain additional information from Respondent regarding T.B.'s
9 complaint. Respondent did not appear at the hearing.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Dishonesty)**

12 28. Respondent is subject to disciplinary action under Business and Professions Code
13 section 5100(c) as detailed above in paragraphs 8 through 27, in that Respondent failed to timely
14 and accurately advise his client, T.B., on the California Franchise Tax Board First Time Home
15 Buyer Tax Credit despite repeated assurances that he was "researching" it. Respondent failed to
16 timely and accurately prepare T.B.'s California Franchise Tax Board First Time Home Buyer Tax
17 Credit, despite his assurances that he was doing so, and T.B.'s reliance on Respondent's false
18 representations. Instead, Respondent advised T.B. that the program for the tax credit had run out
19 of money when, in fact, that was not the case. Accurate information on the tax credit was readily
20 available on the internet.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Gross Negligence)**

23 29. Respondent is subject to disciplinary action under Business and Professions Code
24 section 5100(c) as detailed above in paragraphs 8 through 28, in that Respondent failed to timely
25 and accurately advise his client, T.B., on the California Franchise Tax Board First Time Home
26 Buyer Tax Credit despite repeated assurances that he was "researching" it. Respondent failed to
27 timely and accurately prepare T.B.'s California Franchise Tax Board First Time Home Buyer Tax
28 Credit, despite his acceptance of T.B.'s request that he do so, his assurances that he was doing so,

1 and T.B.'s reliance on Respondent's false representations. The information on the tax credit was
2 readily available on the internet. Respondent's failure to timely prepare the application for T.B.'s
3 tax credit resulted in T.B. being denied a \$10,000.00 tax credit to which he was otherwise
4 entitled.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Repeated Acts of Negligence)**

7 30. Respondent is subject to disciplinary action under Business and Professions Code
8 section 5100(c) as detailed above in paragraphs 8 through 29, in that Respondent failed to timely
9 and accurately prepare T.B.'s application for the California Franchise Tax Board First Time
10 Home Buyer Tax Credit, repeatedly provided false or inaccurate information to T.B., and
11 ultimately caused T.B. to be denied a \$10,000.00 tax credit to which he was otherwise entitled.

12
13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Willful Violation of the Accountancy Act)**

15 31. Respondent is subject to disciplinary action under Business and Professions Code
16 section 5100(c) as detailed above in paragraphs 8 through 30, in that Respondent's actions reflect
17 willful violations of the Accountancy Act.

18
19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Respond to Board Inquiry)**

21 33. Respondent is subject to disciplinary action under California Code of Regulations
22 Title 16, Section 52, in conjunction with Business and Professions Code section 5100(g) as
23 detailed above in paragraphs 8 through 32, in that Respondent failed to respond fully or timely to
24 CBA's inquiry into T.B.'s complaint. In the information provided by Respondent to CBA,
25 Respondent claimed that T.B.'s application for the tax credit was pending the Franchise Tax
26 Board's review; however Respondent had already been provided with a copy of Franchise Tax
27 Board's denial letter to T.B., and the grounds for the denial. Respondent's written response to the
28

1 CBA's inquiry into T.B.'s complaint failed to meet the CBA's requirements that a licensee
2 provide true and accurate information and responses.

3 45. The CBA required Respondent's personal appearance at a scheduled hearing on
4 November 3, 2011. Respondent failed to appear. Respondent's failure to appear at the CBA's
5 Investigative Hearing constitutes a failure to respond to the CBA's inquiries.

6 46. Respondent's actions in failing to provide true and accurate information and
7 responses, and in failing to respond to CBA's inquiries, constitute a willful violation of the
8 Accountancy Act.

9 **PRAYER**

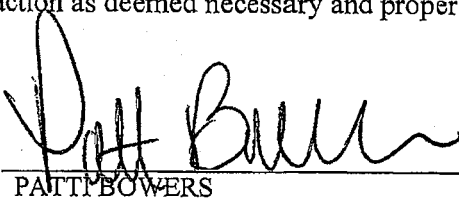
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the California Board of Accountancy issue a decision:

12 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
13 Accountant Number CPA 21402, issued to Michael Alan Kuhn;

14 2. Ordering Michael Alan Kuhn to pay the California Board of Accountancy the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 5107;

17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: August 2, 2012



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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